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IN THE

Supreme Court of the United States

October Term, 1952

No. 31

UNITED STATES OF AMERICA ex rel.
JAMES SMITH,
Petitioner

v.

DR. FREDERICK S. BALDI, Superintendent
Philadelphia County Prison

On Certiorari to the United States Court of Appeals for the Third Circuit.

APPENDIX TO SUPPLEMENTAL BRIEF OF THE ATTORNEY GENERAL OF PENNSYLVANIA FOR THE RESPONDENTS

FRANK P. LAWLEY, JR.,
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Murrelle Printing Company, Law Printers, 201-3 Lockhart St., Sayre, Pa.

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STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Federal

CONSTITUTION OF THE UNITED STATES

ARTICLE III.

"Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—

to all Cases of admiralty and maritime Jurisdiction;— to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

* * * * * * *"

ARTICLE IV.

"Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Statutes and Constitutional Provisions Involved

STATUTES

The Revised Judicial Code, 28 U. S. C.

The Act of June 25, 1948, c. 646, 62 Stat. 869 et seq., 28 U. S. Code.

"§1738. State and Territorial Statutes and judicial proceedings; full faith and credit.

"The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Pos-

sessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

"§ 2252. Notice.

"Prior to the hearing of a habeas corpus proceeding in behalf of a person in custody of State officers or by virtue of State laws notice shall be served on the attorney general or other appropriate officer of such State as the justice or judge at the time of issuing the writ shall direct."

Pennsylvania

CONSTITUTION OF PENNSYLVANIA

ARTICLE 1

"Section 11. Courts to be open; suits against Commonwealth.

"All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in

such courts and in such cases as the Legislature may by law direct."

"Section 14. Prisoners to be bailable; habeas corpus.

All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it."

ARTICLE 5

"Section 3. Jurisdiction of Supreme Court.

The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have original jurisdiction in cases in injunction where a corporation is a party defendant, of habeas corpus, of mandamus to courts of inferior jurisdiction, and of quo warranto as to all officers of the Commonwealth whose jurisdiction extends over the State,

but shall not exercise any other original jurisdiction; they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is now or may hereafter be provided by law."

STATUTES

Act of June 19, 1913, P. L. 528, 19 Purdon's Pennsylvania Statutes Annotated, 1121-1129.

"An Act Fixing the penalty for murder of the first degree; regulating the procedure incident to the infliction thereof; prescribing and providing for a place and manner of inflicting said penalty on the grounds of the new Western Penitentiary of this Commonwealth, in Centre County; making an appropriation therefor; repealing inconsistent legislation; and providing that neither this act nor said repeal shall apply to any case in which it shall appear that said crime was committed prior to the date of the approval of this act.

"Section 1. Be it enacted, &c., That every person, his aiders, abettors and counsellors, hereafter convicted of the crime of murder of the first degree, shall be sentenced to suffer death in

the manner herein provided, and not otherwise. Such punishment in every case, must be inflicted by causing to pass through the body of the convict a current of electricity of intensity sufficient to cause death, and the application of such current must be continued until such convict is dead. The said punishment shall be inflicted by the warden or deputy warden of the Western Penitentiary, or by such person as the warden shall designate, and shall be inflicted in a building to be erected on the land owned by the Commonwealth in Centre County, whereon the buildings of the new Western Penitentiary are to be built.

"Section 2. Whenever any person shall have been convicted and sentenced to death, the clerk of the court where such conviction shall have taken place shall transmit to the Governor of the Commonwealth a full and complete transcript of the record of such trial and conviction, within thirty days after sentence, or, in the event of an appeal, within twenty days after the final disposal of the cause upon such appeal.

"Section 3. After the receipt of the said record the Governor of the Commonwealth shall issue his warrant, directed to the Warden of the Western Penitentiary, commanding said warden to cause such convict to be executed in said peni-

tentiary, within the week to be named in said warrant, and in the manner prescribed by law.

"Section 4. Upon the receipt of such warrant the said warden shall, by a written notice under his hand and seal, duly notify the officer having the custody of such convict to deliver such convict to the custody of such warden, and it shall be the duty of such officer to forthwith cause such delivery to be made. Thereupon, and until the penalty of death shall be inflicted, or until lawfully discharged from such custody, said convict shall be kept in solitary confinement in said penitentiary. During such confinement no person except the officers of such penitentiary, the counsel of such convict, and a spiritual adviser selected by such convict, or the members of the immediate family of such convict, shall be allowed access to such convict without an order of said court or a judge thereof.

"Section 5. No person except the following shall witness any execution under the provisions of this act, the warden of the penitentiary where such execution takes place, a qualified physician, six reputable adult citizens selected by such warden, one spiritual adviser, when requested and selected by the convict, not more than six duly accredited representatives of the daily news-

papers, and such officers of said penitentiary as may be selected by said warden.

"Section 6. After any such execution the warden of the Western Penitentiary shall certify in writing, under oath or affirmation, to the court of oyer and terminer of the county wherein such convict has been sentenced to death, that such convict was duly executed at the place and in the manner prescribed in this act, and at the time designated in the death warrant of the Governor. Such certificate shall be filed in the office of the clerk of such court.

"Section 7. Immediately after execution, a post-mortem examination of the body of the convict shall be made by the physician present at the execution, and his report, in writing, stating the nature of the examination so made by him, shall be annexed to the certificate hereinbefore named, and filed therewith. After such post-mortem examination the body, unless claimed by some relative or relatives of the person so executed, shall be delivered to the duly authorized agent of the State Anatomical Board.

"Section 8. The cost and expense incident to any such execution and such post-mortem examination shall be paid from the contingent fund of the Western Penitentiary.

* * * * * * *

"Section 11. All acts or parts of acts inconsistent herewith are hereby repealed: Provided, however, That neither the provisions of this act nor the repeal above mentioned shall apply to any case in which it shall appear that the said crime was committed prior to the date of the approval of this act.

Section 12. This act is intended to furnish a comprehensive and complete method of inflicting the death penalty. If any portion of this act shall be declared invalid or unconstitutional by the Supreme Court of Pennsylvania, the entire act shall thereupon be null and void."

THE ADMINISTRATIVE CODE

Act of April 9, 1929, P. L. 177, as amended, 71 Purdon's Pennsylvania Statutes Annotated, 1 et seq.

"Section 206. Department Heads.

"Each administrative department shall have as its head an officer who shall, either personally, by deputy, or by the duly authorized agent or employe of the department, and subject at all times to the provisions of this act, exercise the

powers and perform the duties by law vested in and imposed upon the department.

"(a) The following officers shall be the heads of the administrative departments following their respective titles:

* * * * * * *

"Attorney General, of the Department of Justice;" (As amended, 19 Purdon's Pennsylvania Statutes Annotated 66)

'Section 704. Attorney General.

"The Attorney General shall be the legal advisor of the Governor, in the performance of his official duties, and the chief law officer of the Commonwealth.

"He shall exercise such powers and perform such duties as may now or hereafter be vested in or imposed upon him by the Constitution and laws of this Commonwealth." (19 Purdon's Pennsylvania Statutes Annotated 244)

"Section 901. Powers and duties in general.

"The Department of Justice shall, subject to any inconsistent provisions in this act contained, continue to exercise the powers and perform the duties by law vested in and imposed upon the Attorney General, the Attorney General's De-

partment and the Department of Justice." (19 Purdon's Pennsylvania Statutes Annotated 291)

"Section 902. Legal advice.

"The Department of Justice shall have the power, and its duty shall be;

"(a) To furnish legal advice to the Governor, and to all administrative departments, boards, commissions, and officers of the State Government, concerning any matter or thing arising in connection with the exercise of the official powers or the performance of the official duties of the Governor, or such administrative departments, boards, commissions, or officers;

"(b) To supervise, direct and control all of the legal business of every administrative department, board, and commission of the State Government." (19 Purdon's Pennsylvania Statutes Annotated 292)

"Section 903. Litigation.

"The Department of Justice shall have the power, and its duty shall be:

"(a) To collect, by suit or otherwise, all debts, taxes, and accounts, due the Commonwealth, which shall be placed with the de-

partment for collection by any department, board, or commission. The department shall keep a proper docket or dockets, duly indexed, in which it shall make and preserve memoranda of all such claims, showing whether they are in litigation and their nature and condition;

"(b) To represent the Commonwealth, or any department, board, commission, or officer thereof, in any litigation to which the Commonwealth or such department, board, commission, or officer, may be a party, or in which the Commonwealth or such department, board, commission, or officer, is permitted or required by law to intervene or interplead." (19 Purdon's Statutes Annotated 293)

Act of May 3, 1850, P. L. 654, 16 Purdon's Pennsylvania Statutes Annotated 3431

"An Act Providing for the election of District Attorneys.

"Section 1. Duties; entry of nolle prosequi.

"The officer so elected shall sign all bills of indictment, and conduct in court all criminal and other prosecutions in the name of the common-

wealth, or when the state is a party, which arise in the county for which he is elected, and perform all the duties which now by law are to be performed by deputy attorney generals, and receive the same fees or emoluments of office: Provided, Said district attorney shall in no case whatever have authority to enter nolle prosequi in any criminal case, either before or after bill found, or to discharge a prisoner from custody, without first having obtained the approbation of the court in writing."